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SUBJECT: French Digital Copyright Law Demarche

REF: A) STATE 190838 B) PARIS 6811 B) PARIS 5242

¶1. (SBU) Summary: Per Ref A, Embassy officers have reiterated USG concerns relating to the proposed decree (Ref B), which would implement France's controversial new copyright legislation. We will use the upcoming visit of DUSTR Veroneau December 8 to underscore the importance of this issue for the U.S. French government officials continue to tell us they are open to concrete suggestions to minimize the impact on industry but time is growing short. We understand the draft decree will be reviewed by an inter-ministerial committee starting the week of December 4 and that it could be approved by the Conseil d'Etat as early as January 2007. End of Summary.

¶2. (SBU) Embassy officers delivered Ref A demarche on the draft implementing decree of France's copyright law to Ministry of Culture cabinet advisor Marc Herubel on November 28, and to Trade Minister Lagarde's EU adviser, Eric Peters on November. Additional meetings are scheduled with President Chirac's staff and with the Industry Minister's Legal Adviser. We also briefed representatives of the Business Software Alliance (BSA) November 27. In response to our concerns, Herubel explained that while he is open to suggestions regarding the draft decree, it could not contain any language contradicting or adding to the substance of the law. He noted that the new Technical Authority will develop "jurisprudence" on a case-by-case basis and it is anticipated this will be elaborated further by decisions of the Cour d'Appel de Paris (appeals court) and the Cour de Cassation (court of last resort). Herubel informed us that an inter-ministerial process to review and approve the decree will commence December 4. He added that there would be no other or additional decrees regarding the implementation of the law, with the exception of the decrees nominating the members of the TMRA (Technical Measures Regulation Authority). Herubel concluded that Culture Minister deVabres would like the new authority to be fully operational by the end of January, but Herubel doubts this will be the case.

¶3. (SBU) In our meeting with Herubel, he said that access of consumer groups to the TMRA would be limited to questions of "exceptions" to copyright, which in France also include the "right to private copy." He confirmed that consumers groups would not have standing before the TMRA regarding interoperability issues. Finally, regarding trade secrets, Herubel explained that his Ministry had decided to allow the TMRA to determine the process of protecting trade secrets. He noted that such decisions, either to keep documents confidential or not, would not be subject to appeal. (Note: France does not have legislation protecting trade secrets comparable to that which exists in the U.S. End note.)

¶4. (SBU) Herubel suggested three specific areas where U.S. comments could be helpful:

-- As the TMRA will enforce the principle of interoperability based on the findings of "rapporteurs," who will determine whether specific technical measures are indeed sufficient to protect copyright, Herubel said specific language could be introduced detailing what are "permissible technical measures" (see Article 14

of the law, L. 331-7);

-- The guidelines on the scope of action of the TMRA and the rapporteurs are outlined in Art 331-19, para 1 and 4 of the draft decree. Herubel welcomed our suggestions on guidelines/principles that could be used by the new authority to determine the efficiency and integrity of Digital Rights Management (DRM) systems.

-- On compensation, Herubel suggested that we provide him with language to be added to Art 331-19, para 2 of the draft decree defining how to measure and determine what would be "just" and appropriate (e.g. true economic value) compensation.

15. (SBU) Eric Peters, a member of Trade Minister Lagarde's cabinet, explained that while the Ministry of Culture has the lead on the issue, the start of the inter-ministerial process will provide other Ministries, such as Trade and Industry, an opportunity to review and influence the proposed decree. Peters and his staff will review the decree to determine in particular its compatibility with EU directives and WTO commitments. Peters asked that we remain in close touch with the Trade Ministry in the coming weeks on this issue.

16. (SBU) Comment: Although we were told by industry that European Commission officials have indicated concern with the French law, we understand the French have heard very little from the Commission. Continued sensitization of Brussels by a broad spectrum of U.S. and European industry of our concerns would be helpful. BSA has informed us that in its view much more pressure needs to be exerted on the French to effect real change. Additional guidance on these issues, as well as those identified by Herubel (compensation, permissible technical measures, DRM integrity/efficiency guidelines) would be appreciated. We will continue to press our broader concerns with contacts throughout the French government as the inter-ministerial process reaches its end-game. But we also take

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note of Herubel's comment that many key questions are likely to be decided by jurisprudence that will evolve from decisions of the TMRA and the French courts.

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